Supreme Court, U.S.
FILED

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NO. 00-_____

IN THE
SUPREME COURT OF THE UNITED STATES

HENRY WILLIS BROWN, JR.,
Petitioner
vs

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER DEFENDANT'S CONVICTIONS VIOLATE DUE PROCESS WHEN THEY WERE BASED ON A LEVEL OF PROOF THAT DOES NOT RISE TO THE REQUIREMENTS OF THE BEYOND A REASONABLE DOUBT STANDARD?

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Petitioner Henry Willis Brown, Jr. respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals entered October 25th, 2000.

OPINION OF THE FOURTH CIRCUIT COURT OF APPEALS

The opinion of the Court of Appeals that gives rise to this petition is attached as Appendix A and is designated as United States v. Brown.(No. 00-4432, unpub. dec. 10/25/2000)

JURISDICTION

1. The decision sought to be reviewed was decided on October 25th, 2000.

2. There are no cross petitions.

3. The provision believed to confer jurisdiction on this Court to review the

Judgment is as follows:

That the decision of the Court of Appeals decided an important question of federal law that has not been definitively settled by the Supreme Court and which conflicts with prior precedent of this Court. Rule 10(c), United States Supreme Court Rules.

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense twice be put in jeopardy of life or limb; nor shall be compelled in a criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation.

STATEMENT OF THE CASE

On September 27th, 1999, three-count indictment issued charging Defendant in Count One with fraudulently receiving Social Security benefits in violation of 42 U.S.C.

sec. 1383(a)(3)(B). Count Two alleged wrongful conversion of Social Security benefits in violation of 42 U.S.C. sec. 1383a(a)(4), and Count Three charged Defendant with submitting a false receipt regarding a Social Security matter in violation of 18 U.S.C. sec. 1001. Count One was dismissed by the Government prior to trial.

The case was called for trial on December 13th, 1999, before the Honorable James A. Beaty, Jr. The jury returned verdicts of guilty to Counts Two and three.

The Court sentenced Defendant to a four year term of probation which included the requirement that Defendant pay $4417.88 to the Social Security Administration

STATEMENT OF FACTS

Dwight Moberly testified that he was formerly employed at the Winston-Salem, North Carolina, Social Security Office. He was familiar with the Social Security

records of Leroy Davis. Davis, though presently deceased, had been awarded Supplemental Security Income benefits to Davis in June of 1995. Davis' award included $12,772 in retroactive benefits. Because the administrative law judge determined that alcoholism contributed to Davis' disability, the Social Security Administration was required to pay both retroactive and regular monthly benefits to Davis through a representative payee.

Social Security records indicated that in October, 1995, Henry Brown applied and was selected as representative payee for Leroy Davis and began receiving benefits for Davis the following month. According to Moberly, Defendant continued as payee for Davis through April, 1997.

Moberly testified that records showed that Mr. Davis was admitted to North Carolina Baptist Hospital in September, 1996, as a result of seizures and strokes. On

November 6th, 1996, Davis was discharged to Pellcare Nursing Home. Moberly stated that at that point Davis' benefits would have been reduced to $30.00 monthly because Medicaid was paying for the nursing home, and that Pellcare would have been substituted as new representative payee. A total of $6342.00 was paid to Defendant for Davis after December 1st, 1996. In January, 1997, Defendant repaid $511.12 to the Leroy Davis account. Brown made additional payments of $1897.00 on November 22nd and 23rd, 1999.

Moberly identified Government's Exhibit 5 as a receipt in the amount of $3950.00 from Defendant for Davis' Social Security benefits. The receipt was signed by Dorothy Ann Dickson. He had learned that Social Security employees had received the receipt from Defendant in July or August, 1997. According to Moberly, if the $3950.00 had been paid by Defendant to Pellcare, the Social Security

Administration would have looked to Pellcare for reimbursement of the overpayment.

Moberly testified that Brown was not entitled to any fee as Davis' representative payee after December 1st, 1996, for periods when Davis was no longer in his care.

On cross-examination, Moberly stated that Brown appeared to be qualified to serve as a representative payee because he appeared to be trustworthy. Moberly was not aware of how Brown disbursed the Social Security funds to Davis, though he was aware that many representative payees dealt in cash. Brown was entitled to collect a $50.00 monthly fee for serving as Davis' payee. Moberly was not aware of how Brown collected his fee. Moberly did not know if Brown took any fee for the period following December, 1996 when he was no longer entitled to serve as Davis' representative payee. Moberly was unaware of who was paying Davis' rent prior to the time Davis entered the

nursing home, though such rent payments would have been Brown's responsibility.

Moberly testified that he had no information that Brown did not make required payments for Davis or the other recipients he serviced. According to Moberly, the initial determination that Defendant was entitled to collect a fee was based on "an incorrect determination by the agency." Defendant's Exhibit 1 correctly summarized Moberly's conversation with Agent Lynch of the Office of Inspector General, in which Lynch stated "we could go ahead and jerk Henry Brown's chain regarding his being improperly approved to charge fee."

Moberly admitted that Brown responded several times to Moberly's inquiries regarding his qualification to serve as a representative payee. Moberly stated that Brown was, in fact, entitled to charge a payee fee until such time as Moberly determined that he was not so entitled. In response

to Moberly's inquiries, Brown sought help from state and federal legislators and complained to Moberly's regional manager. Moberly agreed that Brown's letters responding to the Social Security Administration's inquiries were somewhat confusing and he did not understand all of their contents. Brown repeatedly asked for justification as to why he had been removed from numerous Social Security accounts.

Moberly identified Defendant's Exhibit 8 as a letter in which he had written the following:

> While we did not find sufficient evidence to determine that you had misused any of these benefits, the review clearly shows that your record keeping practices were very inadequate.(App. 38-9, 188)

Social Security had never given Defendant any training in proper record-keeping or documentation requirements for his role as representative payee.

On redirect Moberly stated that Brown was initially receiving benefits for approximately 30 individuals and seemed to do a good job. The agency was never able to substantiate any misuse of benefit funds by Brown. Id. Brown never provided receipts that Moberly considered satisfactory, though he did leave the documents identified as Government's Exhibit 6 at the front desk one occasion. Defendant had never provided Moberly with any explanation about the handling of the funds which he'd received from December 1st, 1996 through April 1st, 1997 on behalf of Leroy Davis.

On recross-examination Moberly reiterated that he was not saying that Brown had collected a fee to which he was not entitled.

Janice Luebbert, officer manager for Pellcare Nursing Home in Winston-Salem, North Carolina, testified that Leroy Davis was admitted to Pellcare on November 6th,

1996. On November 12th Pellcare sent forms to the Social Security Administration requesting that Davis' benefits be redirected to Pellcare. After receiving no response for approximately 60 days, Social Security eventually sent forms asking Pellcare to become Davis' representative payee.

Luebbert became aware in 1997 that someone was claiming that Pellcare had received a cash amount of almost $4000.00 on behalf of Leroy Davis. Luebbert stated that the $3950.00 receipt attached to Government's Exhibit 10 was not Pellcare's receipt. She stated that she did not know anybody named Dorothy Ann Dickson, the name appearing on the receipt. According to Luebbert, Pellcare never received any funds from Defendant and the form the receipt was on had never been used by Pellcare.

On cross-examination Luebbert stated that nobody had ever given her a description of Dorothy Ann Dickson or

asked to review employee photographs to identify her, despite the fact that the photographs of current and former employee were available for inspection.

Judy Ellis testified that she was employed by the Social Security Administration. In July, 1997 she conducted an investigation regarding an alleged overpayment to Henry Brown on the Leroy Davis account. According to Ellis, Defendant told her during a telephone call that he had refunded the $3950.00 to Pellcare. Brown told Ellis that he had paid the sum in cash to a lady behind glass at the front of the Pellcare office named Dorothy Ann Dickson. He also told her that he had a receipt and gave her a copy.

Regina Bearden, a Social Security Administration service representative, testified that in July or August, 1997, she received the receipt that Henry Brown had brought and said that he had received from Pellcare Nursing Home. Defendant told her that he had released the

$3950.00 to Pellcare. She identified Government's Exhibit 5 as a copy of the receipt she received.

Special Agent Daniel Lynch of the Social Security Office of Inspector General testified that he was in charge of the Henry Brown investigation. In the course of the investigation Lynch subpoenaed First Union Bank records in the name of Henry Brown, H.B. Family Health Care Services. These were the records of the account set up by Defendant to receive the benefit funds of Leroy Davis. The records, admitted as Government's Exhibit 12, showed account activity from November 30th, 1996 through September 30th, 1997.

Lynch stated that the account records showed the following activity:

1)November 30th, 1996-$470 SSI deposit.

2)December 3rd, 1996-$3950 SSI deposit.

3)December 31st, 1996-$484 SSI deposit.

4)December 2nd, 1996-$470 withdrawal.

5)December 4th, 1996-$470 withdrawal.

$)December 10th-$3847 withdrawal.

6)December 13th, 1996-$58 withdrawal.

7)January 3rd, 1997-$511.12 withdrawal.

8)January 31st, 1997-$484 SSI deposit.

9)February 28th, 1997-$484 SSI deposit.

10)April 1st, 1997-$484 SSI deposit.

11)April 9th, 1997-$960 withdrawal.

12)May 16th, 1997-$489 withdrawal.

On cross-examination, Lynch stated that he never obtained handwriting exemplars from Henry Brown regarding the Pellcare receipt in controversy.

Testifying for the defense, Charles Clegg testified that he had been employed at the Winston-Salem Social Security Office since 1992. He had taken over Defendant's case after Mr. Moberly left the office. Defendant's Exhibit

9 was a letter Clegg wrote Brown in response to Brown's request for information regarding the amount the SSA claimed he owed as part of the agency's accounting. In that letter, Clegg told Brown that the total amount owed was $13,624 , which included all sums paid for Leroy Davis during 1996, including the $3950 in controversy.

On cross-examination, Clegg stated that Brown never provided an accounting regarding Leroy Davis.

MANNER IN WHICH FEDERAL CONSTITUTIONAL QUESTIONS WERE RAISED BELOW

Petitioner's trial counsel made appropriate motions to dismiss for insufficiency of the evidence, and the Trial Court's denial of these motions were presented to the Fourth Circuit.

REASONS FOR GRANTING THE WRIT

PETITIONER'S CONVICTIONS VIOLATE DUE PROCESS BECAUSE THE GOVERNMENT'S EVIDENCE ONLY RAISED A SUSPICION THAT PETITIONER HAD COMMITTED ANY CRIMINAL WRONG

It is well-settled, of course, that the Government can only obtain a criminal conviction by proving each and every element of the charge beyond a reasonable doubt. As this Court emphasized in In re Winship, 397 U.S. 358, 25 L. Ed. 2d. 368(1970),

" the reasonable-doubt standard is indispensable, for it "impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue." Dorsen & Rezneck, In Re Gault and the Future of Juvenile Law, 1 Family Law Quarterly, No. 4, pp. 1, 26 (1967). Consistent with this fundamental Constitutional principle, the law is clear that due process requires the prosecution to meet this

exacting standard in all criminal prosecutions. Under the controlling authority of Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560(1979), "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Id. at __(citing Johnson v. Louisiana, 406 U.S.356,362(1972).

Petitioner respectfully submits that the Trial Court committed Constitutional error by submitting the two charges upon which Defendant was convicted to the jury because the Government's proof did not satisfy the requirements of Jackson v. Virginia, supra. This case thus provides the Court with an opportunity to reemphasize to trial tribunals that the reasonable doubt standard is alive and well in American criminal jurisprudence.

A)APPELLANT'S CONVICTION OF VIOLATING 42 U.S.C. 1383a(a)(4) CANNOT STAND, BECAUSE THE GOVERNMENT DID NOT PRESENT SUBSTANTIAL EVIDENCE THAT APPELLANT CONVERTED THE SUPPLEMENTAL SECURITY INCOME BENEFITS OF LEROY DAVIS TO A USE OTHER THAN FOR THE USE AND BENEFIT OF DAVIS

The first charge submitted to the jury was set forth in Count Two of the indictment, and alleged as follows:

> From on or about November 6, 1996, to on or about April 1, 1997, in the County of Forsyth, in the Middle District of North Carolina, HENRY WILLIS BROWN, JR., having made application to receive Supplemental Security Income benefits for the use and benefit of Leroy Davis, and having received such benefits, knowingly and willfully converted such benefits in the approximate amount of $6826 to a use other than for the use and benefit of the said Leroy Davis, in violation of Title 42, United States Code, Section 1383a(a)(4)(App. 6-7)

In order to prove a violation of 42 U.S.C. 1383(a)(4), it was incumbent on the prosecution to establish the following five elements:

1)That Henry Brown applied to receive SSI benefits on behalf of Leroy Davis;

2)That Brown actually received the specified benefits;

3)That Brown converted the benefits for a use other than for the use and benefit of Davis;

4)That Brown knew that the received benefits were meant for a use other than which he used them;

5)That Brown converted the Davis benefits to a use other than the use and benefit of Leroy Davis voluntarily and with the specific intent to do something that the law forbids.

Petitioner does not dispute that the Government offered proper proof of elements one and two, as there was no real question that Brown applied for and was designated, properly or otherwise, as the representative payee for Leroy Davis. Likewise, there was no question from the applicable First Union Bank records that the funds in question were deposited into the payee account Brown had set up for Davis. The Constitutional infirmity in Appellant's

conviction of Count Two arises from the insufficiency of evidence on the final three elements, as the Government's allowed no more than speculation that Henry Brown voluntarily converted Davis' SSI benefits for some unauthorized purpose. Phrased differently, 42 U.S.C. 1383(a)(4)requires the Government to prove through competent evidence that Henry Brown intentionally took the Davis funds and spent them in some manner that did not benefit Davis.

Here there was no evidence presented that would have allowed a rational trier of fact to confirm any suspicions regarding Petitioner's handling of the Davis account. For example, while the bank records offered by the Government documented withdrawals from the Davis payee account, the Prosecution failed to present any evidence as to the disposition of the funds withdrawn. Certainly had the prosecution offered a canceled check on

the Davis account indicating that Brown had purchased some item such as a car or stereo that would obviously not have been necessary for the support of a disabled person, then the jury could reasonably have concluded that the improper use elements of 42 U.S.C. 1383a had been adequately proven. However, absolutely no such evidence was offered, and thus any conclusion that the funds were improperly used would rest on only rank speculation, hardly the foundation envisioned by Jackson v. Virginia to satisfy the constitutional reasonable doubt standard. Here the prosecution offered no evidence at all as to what, if anything, Brown had done with the Davis SSI deposits. From the evidence presented, it was equally likely that Brown purchased items for Davis rather than for some other purpose.

Appellant would also point out that the Government's own agency witness admitted that it was common for

representative payees to deal in cash on behalf of their beneficiaries, many of whom did not have bank accounts. Considering the evidence in its totality, the most that can objectively be stated is that that Henry Brown failed to satisfy the accounting requirements of the Social Security Administration regarding the disputed Davis funds. While perhaps blameworthy in a civil context, Brown's inability to furnish documentation satisfactory to the agency falls far short of the voluntary conversion elements of 42 U.S.C. 1383a, particularly when Mr. Moberly was forced to reluctantly admit that Brown never was given any instruction or training in agency reporting requirements. In order to convict Appellant, it was incumbent on the Government to present substantial evidence that he used the questioned funds for an improper purpose. Here there was simply no way beyond speculation or conjecture for the jury to determine how Brown used the Davis funds, either

properly or improperly. This total failure of proof on an essential element of the crime charged thus requires that Appellant's conviction on Count Two be set aside.

B)APPELLANT'S CONVICTION OF COUNT THREE LIKEWISE DOES NOT SATISFY THE CONSTITUIONAL STANDARD OF PROOF, AS THE GOVERNMENT FAILED TO PROVE THAT THE RECEIPT PRESENTED BY APPELLANT TO THE SOCIAL SECURITY ADMINISTRATION WAS FALSE AND FRAUDULENT AS REQUIRED BY 18 U.S.C. 1001

Count three of the indictment against Appellant alleged that Brown submitted a false receipt to the Social Security Administration regarding a payment made to Pellcare on the Leroy Davis account. Specifically, the Government charged that

> [I]n or about July, 1997, in the County of Forsyth, in the Middle District of North Carolina, HENRY WILLIS BROWN, JR., did knowingly and willfully make a false, fictitious and fraudulent statement as to a material fact in a matter within the jurisdiction of the United States Social Security Administration, an agency of the United States, in that HENRY WILLIS BROWN, JR., stated and represented

both orally and by submitting a false receipt, that HENRY WILLIS BROWN, JR., had paid $3950, which HENRY WILLIS BROWN, JR., had received as the representative payee of Leroy Davis, to Pellcare Nursing Home, where Leroy Davis was then a resident, whereas in truth and fact, as HENRY WILLIS BROWN, JR., then well knew, HENRY WILLIS BROWN, JR., had not paid $3950 to the Pellcare Nursing Home, in violation of Title 18, United States Code, Section 1001.(App. 7,8)

As set out in the indictment, the Government had to prove the following four elements in order to secure a conviction under the general fraud provisions of 18 U.S.C. 1001:

1)That in a matter within the jurisdiction of the Social Security Administration, Brown both orally and by presenting a false receipt, falsely represented that he had paid $3950 in SSI benefits to Pellcare Nursing Home on behalf of Leroy Davis;

2)That Brown knew the representation was false;

3)that Brown made the representation for the purpose of misleading the agency; and

4)That the false representation was material to the activities or decisions that were made in connection with the benefits received by Brown. See generally, United States v. Ismail, 97 F.3d 50 (4th Cir. 1996)

On this Count, the essential factual controversy concerned whether the $3950 receipt admittedly submitted to the agency by Brown was actually false. As above, the prosecution was required to offer substantial evidence of this basic fact. In the light most favorable to the Government, the evidence regarding the alleged falsity of the receipt is summarized below:

Here the most incriminating part of the Government's evidence was Luebbert's statement that Pellcare neither received the $3950 nor had an employee named Dorothy Ann Dickson. However, trial counsel's cross-examination clearly identified the deficiencies in Luebbert's assertions made on direct examination:

Q. Ms. Luebbert, you say you've been there 30 years?

A. Since 1970.

Q. You've seen a lot of people come and a lot of people go, haven't you?

A. Yes.

Q. How many employees do you have here at Pellcare right now?

A. Total employees?

Q. Yes. Ma'am.

A. We have 167.

Q. Okay. Do you know how many you had in 1997?

A. It would vary, but probably between 169 and 175.

Q. Okay. And comparatively how much turnover did you have between 1997 and 1999.

A. I would say approximately 100 percent.

Q. Okay. It turns over a lot?

A. Nonprofessional, yes.

Q. Okay. And of the number of employees that are there, what's the average male and female percentage would you say?

A. I beg your pardon?

Q. Percentagewise how many females do you have and how many males do you have?

A. We have, I would say, 80-percent female.

Q. Does each person that comes to work at Pellcare fill out an application?

A. Yes, sir.

Q. Do you have a photo of them? Do you have photos of each person?

A. Yes. Q. So in the personnel files there's photos of each individual?

. . .

Q. Did anybody ever give you a description of Dorothy Ann Dickson?

A. No.

Q. Did anybody ever ask you to see your employee photographs to identify somebody --

A. No.

Q. -- represented as Dorothy Ann Dickson?

A. (Shakes head.)(App. 60, lines 4-25, p. 61, lines 1-9, p. 63, lines 18-25)

From the foregoing, it is clear that Pellcare was hardly a "Mom and Pop" operation, but was rather a large facility with constant employee turnover. On these facts, it is easy to imagine how Ms. Luebbert could have forgotten a single front desk employee, who might well have been a temporary worker only present a short time. Even more significant is the Government's failure to produce the

evidence that could easily have proven that the $3950 receipt was false, i.e., the Pellcare bank records for early January, 1997 which would presumably show no entry in the amount of $3950 for Leroy Davis, or the employee records discussed by trial counsel which would presumably have shown no Dorothy Ann Dickson. Since Appellant, of course, had no burden or proof or persuasion on this point, the failure of the Government to offer what would have been incontrovertible evidence can certainly be held against it.

Certainly Appellant does not dispute that the Government's evidence on Count Three was incriminating to some extent. However, the standard required by Jackson v. Virginia, supra, extends well beyond the point of incriminating, and obligates the Government to satisfy the highest standard our law recognizes. Suspicion, even the strong suspicion aroused by the evidence presented as to

Count Three, does not suffice to sustain a criminal conviction. Certiorari should issue so that this Court may make clear to lower Courts that suspicions does not suffice to satisfy Constitutional standards of proof in criminal prosecutions.

CONCLUSION

For the reasons set forth herein, Petitioner respectfully requests that this Court issue Writ of Certiorari to allow review of Defendant's convictions and to correct the Constitutional errors arising from the deficiencies of the Government's proof.

Respectfully submitted, this the 7th day of March, 2001.

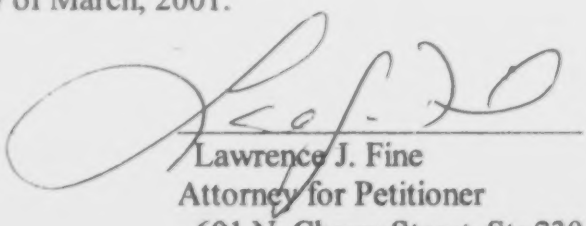
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **Petition for Writ of Certiorari** was served on the parties named below through first class United States mail, postage prepaid:

Mr. Michael F. Joseph
Assistant United States Attorney
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This the 12 day of March, 2001.



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APPENDIX

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*	)	
v.	)	No. 00-4432
HENRY WILLIS BROWN, JR., *Defendant-Appellant.*	)	

Appeal from the United States District Court
for the Middle District of North Carolina, at Durham.
James A. Beaty, Jr., District Judge.
(CR-99-249)

Submitted: October 12, 2000

Decided: October 25, 2000

Before WILLIAMS and MOTZ, Circuit Judges, and
HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion

COUNSEL

J. Clark Fischer, RANDOLPH & FISCHER, Winston-Salem, North Carolina, for Appellant, Walter C. Holton, Jr., United States Attorney, Michael F. Joseph, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinion are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Henry Willis Brown, Jr., appeals from a four-year term of probation imposed following his convictions for converting Social Security disability benefits, 42 U.S.C. § 1383a(a)(4) (1994), and making a false statement to the Social Security Administration, 18 U.S.C. § 1001 (1994). He claims that the evidence was insufficient to support his convictions. Finding no reversible error, we affirm his convictions and sentence.

We review a jury verdict for the sufficiency of the evidence by determining whether there is substantial evidence, when viewed in the light most favorable to the government, to support the verdict. *See Glasser v. United States*, 315 U.S. 60, 80 (1942). In evalu*ating the su*fficiency of the evidence, we do not review the

credibility of the witnesses, and we assume that the jury resolved all contradictions in the testimony in favor of the government. *See United States v. Romer*, 148 F.3d 359, 364 (4th Cir. 1998), *cert. denied*, ___ U.S. ___, 119 S. Ct. 1032 (1999). We have reviewed the record and briefs and find sufficient evidence to support Brown's convictions. Accordingly, we affirm Brown's convictions and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED